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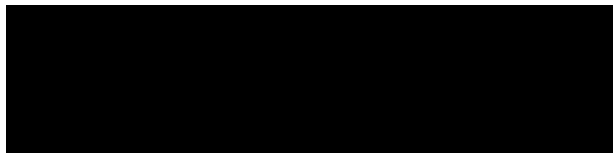
U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536

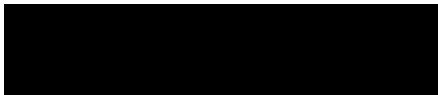


File: WAC 01 221 54662

Office: CALIFORNIA SERVICE CENTER

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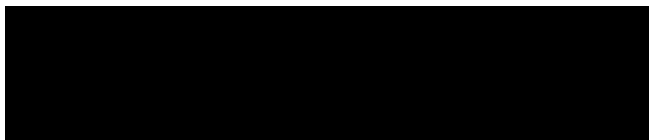
IN RE: Petitioner:
Beneficiary:



JAN 06 2004

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



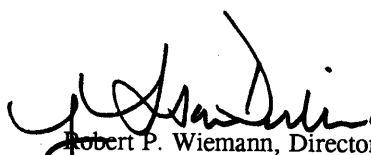
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer, importer, and exporter of amplifiers, guitars, and cases. It has five employees and a gross annual income of \$5,000,000. It seeks to employ the beneficiary as a budget analyst. The director determined that the beneficiary was not qualified to perform the duties of the proffered position.

On appeal, counsel submits a brief and asserts, in part, that the beneficiary is qualified to perform the duties of the position of budget analyst.

The issue in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

With regard to judging whether practical experience or specialized training is equivalent to the completion of a college degree, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the

specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates

who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In the initial petition, the petitioner submitted the beneficiary's resume, an evaluation issued by Universal Credential Evaluators, a letter from the beneficiary's former employer, copies of the beneficiary's Philippine college transcripts, and copies of training certificates. Dr. Michael Shane, of Universal Credential Evaluators, determined that, based upon the beneficiary's education, training, and work experience, the beneficiary had attained the equivalent of a bachelor of science degree in business administration from an accredited U.S. university.

The director requested further evidence to establish the beneficiary's qualifications, specifically, an acceptable foreign educational credentials evaluation considering the beneficiary's post secondary education only and not her practical experience. In response the petitioner resubmitted the same materials which were already on the record. The director denied the petition on June 17, 2002, determining that the petitioner had not established that the beneficiary had training and employment experience equivalent to a bachelor's degree in a specific specialty.

On appeal, counsel asserts that, although the beneficiary did not graduate from the university, her education combined with her work experience is the equivalent of a U.S. bachelor's degree in business administration.

Upon review of the record, the AAO finds that the educational equivalency document from Universal Credentials Evaluators is insufficient on two grounds. First, the record does not indicate that the beneficiary graduated from the University of Santo Tomas, in Manila, yet the evaluation states that the beneficiary "completed studies" at the University of Santo Tomas, notes that her "diploma" is equivalent to a U.S. bachelor of science in business administration, and makes reference to the "Institution(s) Graduated". Without further verifiable clarification of the equivalency of the beneficiary's Philippine university studies, Citizenship and Immigration Services (CIS) is unable to determine how the evaluator arrived at his conclusion that the beneficiary held the equivalent of a U.S. bachelor's degree in business administration.

Secondly, there is no evidence on the record that Dr. Michael Shane of Universal Credential Evaluators has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 820 (Comm. 1988). {PRIVATE }Accordingly the educational equivalency document from Universal Credentials Evaluators is given no weight in this proceeding. Without such an evaluation, the petitioner has not satisfied the regulatory criterion outlined in 8 C.F.R. § 214.2 (h)(4)(iii)(C)(2). The first and third criteria are not applicable to the instant petition.

Pursuant to the fourth criterion above, as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS can evaluate whether the beneficiary has acquired the equivalent of a baccalaureate degree through a combination of education, specialized training, and/or work experience in areas related to the specialty and whether the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. Since the U.S. educational equivalency of the beneficiary's Philippine post-secondary studies has not been determined, the petitioner would have to establish that the beneficiary possesses twelve years of progressively responsible work experience in order to fulfill the criteria outlined in the regulations.

The letter from Philbank, the beneficiary's former employer, documents twelve years of work experience, but it does not discuss the beneficiary's specific duties and responsibilities. The beneficiary's work experience, thus, does not appear sufficient to adequately meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Without more persuasive testimony, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation.

Beyond the decision of the director, the evidence on the record is insufficient to establish that the proffered position is a specialty occupation. Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the original petition, the petitioner described the duties of the proffered position as including the analysis of methods to increase the petitioner's efficiency and profits, advising the petitioner on budget preparation, auditing expenditures for budget

compliance, and approval of requests for funds. The director asked for further information with regard to whether the proffered position was a specialty occupation. In response, the petitioner quoted the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) section on budget analysts, and submitted a copy of the job posting for the proffered position. The job posting did not mention any degree requirement.

In his denial, the director did not bring up the issue of whether the position was a specialty occupation. However, upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. CIS often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. According to the *Handbook*, 2002-2003 edition on page 30, a bachelor's degree is the preferred minimum entry requirement for budget analysts, although occasionally budget and financial experience may be substituted for formal education. The *Handbook* notes that many different educational fields provide an appropriate background to perform the duties of a budget analyst. Inasmuch as the *Handbook* does not indicate that the minimum entry requirement for budget analysts is a bachelor's degree in a specific specialty or its equivalent, the position does not meet the definition set forth at 8 C.F.R. § 214.2(h)(4)(ii) and cannot be considered a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.